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TAGS: IZ PGOV KDEM

SUBJECT: DE-BA'ATHIFICATION: NUMBER OF APPEALS DROPS
DRAMATICALLY; ALLAWI TELLS MUTLAQ HARD TRUTH

Classified By: Acting Deputy Chief of Mission Gary A. Grappo for reason
1.4 (b) and (d).

¶1. (C) SUMMARY: Post received clarification as well as
additional confusion February 2 on the ongoing
de-Ba'athification controversy.

-- The Cassation Chamber judicial panel continues its review
of outstanding cases in the de-Ba'athification controversy
but now faces a dramatically reduced number of appeals to be
adjudicated, with the total cases to be reviewed having
dropped in the past week from approximately 400 to 70. The
Chamber continues to press the Accountability and Justice
Commission (AJC) for better cooperation.

-- Although the PM explicitly ordered IHEC January 18 to stop
accepting new names from AJC for de-Ba'athification
exclusion, the order was not implemented.

-- Iraqiyya List head Ayad Allawi reportedly has told Saleh
al-Mutlaq that he might have to "live with" the
de-Ba'athification order, but that Iraqiyya would continue
to fight to have all its candidates reinstated; 67 of the 72
Iraqiyya candidates on the de-Ba'ath list have reportedly
filed their appeals and five have withdrawn.

-- Inflammatory footage allegedly is being broadcast on some
Iraqi TV stations in which beheadings by agents of the
Ba'ath party pre-2003 are shown with images of Allawi and
Mutlaq next to them.

-- It is difficult to square assertions that there are only
70 appeals now active, with Allawi's claim of 67 appeals by
Iraqiyya candidates, unless nearly all of the appeals cases
are from Iraqiyya, which does not seem plausible. Post
continues to seek more clarity on the party/coalition
composition of the appeals cases in the coming days and on
the numbers of candidates still on the disqualification list,
which has picked up speed as a moving target in the past
several days. END SUMMARY.

NUMBER OF APPEALS DROPS

¶2. (C) On January 30, Supreme Court Chief Judge Medhat
al-Mahmoud told A/DCM that he expected the special
seven-judge Cassation Chamber to complete its review of
candidates within 10 days, elaborating that any cleared
candidates would then be added to a supplemental candidate
list by IHEC. In an update to Emboff on February 1, Medhat
highlighted the dramatic reduction in the number of appeals
remaining to be adjudicated, from approximately 400 on
January 30 to approximately 70 on February 2. He explained
the reduction as a combination of the AJC reversing its
earlier judgment about individuals and parties withdrawing
candidates voluntarily.

JUDGES LAY DOWN THE LAW TO AJC

13. (C) According to Judge Medhat, the Cassation Court Panel had formally requested information from the AJC on January 24 about how the Commission was formed, what procedures it was following to issue its decisions, and underlying facts upon which the disqualifications of candidates was based. The panel sent follow-up letters to the AJC on January 26, January 27, and January 28, as well as a stronger letter to the AJC on January 31, "demanding" a response by 2 February. Medhat characterized that final letter as "a threat." The Cassation Chamber could not adjudicate appeals without further information from the AJC, explained Medhat, hinting that the Chamber had indicated to the AJC that all the cases could be dismissed if it refused to cooperate. On the afternoon of February 1, the AJC had provided responses for 20 cases, but Medhat indicated that none of them were cases on which the Chamber was focused. He said the AJC promised further responses on February 2. Medhat said that he did not view IHEC's February 7 deadline for finalizing the ballot as problematic, so long as the AJC responds to the Cassation Court. According to Medhat, the panel of judges could issue opinions one at the time or all at once.

RIKABI TELLS IHEC TO STOP ACCEPTING AJC ORDERS

14. (C) PM's senior advisor Sadiq Rikabi told A/DCM on February 2 that the PM explicitly ordered IHEC to stop accepting new names from AJC for de-Ba,athification exclusion ("Order S/6," according to a copy Rikabi's assistant showed poloff) as of January 18. Rikabi called IHEC Commissioner Hamdia Husseini in A/DCM's presence to ask whether IHEC was honoring additions post-January 18 from

AJC. Husseini told him that the IHEC felt compelled to accept additional names, alleging that the Federal Supreme Court told it that it did not have the authority to question the legitimacy of the AJC's instructions, but was required by law to accept the list of recommended names for exclusion.

Rikabi told A/DCM that he would advise PM Maliki of this tonight and see whether they could push back.

ALLAWI TELLS MUTLAQ HARD TRUTH

15. (C) Iraqiyya List head Ayad Allawi told A/DCM on February 2 that he had told Saleh al-Mutlaq that he might have to "live with" the de-Ba,athification order, but that Iraqiyya would continue to fight to have all its candidates reinstated. He said that 67 of the 72 Iraqiyya candidates on the de-Ba,ath list had filed appeals; five decided to withdraw their own nominations. (COMMENT: It is difficult to square Medhat's assertion that there are only 70 appeals now active, with this comment by Allawi, unless nearly all of the appeals cases are from Iraqiyya, which does not seem accurate. We will seek more clarity on the party/coalition composition of the appeals cases in the coming days. END COMMENT.) Allawi asserted that PM Maliki "inadvertently or purposely" was the catalyst for the illegitimate AJC campaign with his strident remarks in late December about preventing Ba,athists from running for parliament. He said that the de-Ba,ath process was destabilizing Iraq and undermining democratic progress and went together with Maliki's "misguided arrest campaign against the good guys: the moderate Sadrists, political rivals, and the Sahwa movement leadership."

IRAQIYYA CHATTING WITH BOLANI ON HOW TO PROCEED

16. (C) Dr. Nada Ibrahim, a confidant of Mutlaq (and also affiliated with Iraqiyya) told poloff separately that Iraqiyya would boycott the elections if the de-Ba,athification issue was not fixed. She also said that Iraqiyya was refusing to replace excluded candidates on their list out of principle. (Comment: Per above conversation, this appears to be partially erroneous. End comment.) She

indicated that there was some communication also with Bolani's coalition on what to do about de-Ba'ath issues. Ibrahim seemed to believe that if Iraqiyya boycotted there would simply be no election because the UN would not deem it credible. Poloff made clear that there would still be an election, but that such a strategy risked ensuring that no secular nationalists would be elected. He cautioned her that this would have long-term implications and therefore Iraqiyya should avoid this scenario at all costs.

SEASON OF DIRTY CAMPAIGNING BEGINNING

¶ 7. (C) Maysoon al-Damlouji, an MP and Allawi insider, said that many of those excluded had nothing to do with the Ba'ath Party, including Adnan Jinabi, who was one of the best economists in Iraq and had studied at London School of Economics, and Skandar Gudgud, who was the Deputy Governor of Babil, had been a leader in the Shi'a uprising against Saddam in 1991, and had three brothers killed by Saddam. She also reported that Iraqiyya's leaders had met on January 31 and discussed all of their various options. She described the boycott as a "last option," but said that "we feel targeted." Damlouji described inflammatory footage being broadcast on some Iraqi TV stations like Al-Faq in which people are shown being beheaded by agents of the Ba'ath party pre-2003 along with images of Allawi and Mutlaq next to Qparty pre-2003 along with images of Allawi and Mutlaq next to them. Damlouji also railed against Iraq's political leaders, who in her view were being very weak in denouncing the de-Ba'ath process. She singled out Speaker Ayad al-Samarrai's recent statement as being particularly weak and late in the game.

AND A DENIAL OF IRANIAN INVOLVEMENT

¶ 8. (C) Raja Khalili, a longtime friend and advisor to Vice President Abd Mahdi, told Poloffs on February 1 that a political solution to the de-Ba'athification crisis is not feasible because the Iraqi public supports the barring of candidates for Ba'ath Party affiliation. He noted that because of the public response, politicians cannot speak out in a manner that would be perceived as pro-Ba'athist, especially in the run-up to the national election. When asked about rumors that Iran was behind the de-Ba'athification crisis, Khalili said that this was a move by Chalabi, and not of Iranian doing.

IS THE AD HOC COR COMMITTEE GETTING BACK IN THE ACT?

¶ 9. (C) On February 2, Al-Iraqiya TV reported that the Parliamentary Accountability and Justice Commission would hold a meeting on February 2 or February 3 to reevaluate both Saleh Mutlaq and Dhafer Ani's files in accordance with a request from the Parliament's Presidency. On February 2, local media also reported that IHEC announced that some individuals who were put in as replacements for the names excluded by the AJC's order have also been excluded and disqualified because of de-Ba'athification concerns. IHEC Commissioner Qasim al-Aboudi confirmed to poloffs the accuracy of this account. IHEC Chief Operating Officer Hamidiyah Hussaini, was quoted in the media saying that IHEC had received a new list containing 57 names of candidates to be excluded from the upcoming elections from the AJC.

¶ 10. (C) COMMENT: It is difficult to square assertions that there are only 70 appeals now active, with Allawi's claim of 67 appeals by Iraqiyya candidates, unless nearly all of the appeals cases are from Iraqiyya, which does not seem plausible. Post continues to seek more clarity on the party/coalition composition of the appeals cases in the coming days and on the numbers of candidates still on the disqualification list, which has picked up speed as a moving target in the past several days. As this controversy has continued, especially in this last week, the numbers of

candidates being replaced by parties, reinstated by the AJC, heard on appeal by the Cassation Chamber, and vetted anew by the AJC (as replacement candidates) have become increasingly hard to follow. The blizzard of changing numbers has confused government officials and politicians alike, and even IHEC and UNAMI are struggling to maintain a coherent candidate list. What is becoming clear is that it is time for this controversy to draw to a close. We will soon know for sure if the flurry of events (and numbers) in the past few days -- in tandem with the approaching deadlines for printing the candidate list (February 4) and kicking off the campaign (February 7) -- signal that this chapter in the pre-election saga should be drawing to a close.

HILL